

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 205 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HEIRS OF DECD. VINUBHAI BHOGILAL BHOJAK

Versus

PRAJAPATI BABULAL AMBALAL

Appearance:

1. Civil Revision Application No. 205 of 2003
MR UA TRIVEDI for Petitioner No. 1-3
MS KJ BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 30/07/2003

C.A.V. JUDGEMENT

Heirs of deceased Vinubhai Bhogilal Bhojak and others, petitioners, original defendants, have filed this Civil Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act") challenging the judgement and decree dated 24.4.2003

passed by the learned District Judge, Mehsana, in Regular Civil Appeal No. 35 of 1999. The learned appellate judge by his impugned judgement was pleased to allow the appeal of the appellant, original plaintiff-landlord and quash and set aside the judgement and decree passed by the learned 3rd Joint Civil Judge (J.D.), Ahmedabad, in Regular Civil Suit No. 35 of 1995 to the extent of dismissing the prayer of the plaintiff/landlord with regard to recovery of suit premises bearing Municipal No. 1/1566 situated on Rajmahel Road, Mahesana.

2. There is a property situated on Rajmahel Road coming from Railway Station, opposite old fountain, at Mehsana being cabin No. 1/1566. The plaintiff was the owner of the suit premises.

2.1 It was further stated that originally, the deceased Bhogilal Chunilal Bhojak had taken the said premises on rent for Rs. 20/- per month from one Rameshchandra Ishwarlal Shah. Thereafter, they became tenant of Prajapati Babulal Ambalal, original plaintiff, as he has purchased the property from Rameshchandra Ishwarlal Shah. It has been stated in the plaint that defendant did not pay rent from 1.2.1980 to 31.9.1994 i.e. for 176 months in all Rs. 3,520/-. The plaintiff addressed a notice dated 11.10.1994 to the defendant and determined the tenancy of the tenant.

2.2 In view of the same, the plaintiff filed suit being Civil Suit No. 35 of 1995 before the learned Civil Judge (S.D.), Mehsana with a prayer for possession of the suit premises. In the said suit over and above the arrears of rent, the plaintiff has also raised that the defendant is keeping the said premises closed since 30 months and the plaintiff also required the suit premises for reasonable and bona fide requirement. The plaintiff led necessary evidence in this regard.

2.3 The defendant resisted the suit by filing written statement at Exh. 26. They more or less denied the contentions raised by the plaintiff. They denied the fact that they are not using the premises. The defendant relied on panchnama which was prepared on 10.2.1995 at Exh. 48 and the subsequent panchnama at Exh. 49 dated 24.9.1995. It may be noted that panchnama at Exh. 48 shows that the premises was not at all in use where as panchnama at Exh. 49 shows that the premises might be used for some time.

2.4 The learned trial judge after considering the oral and documentary evidence, by his judgement and

decree dated 29.12.1998 was pleased to dismiss the suit of the plaintiff. The learned trial judge has held the following points:

- (1) that the defendant was tenant of the plaintiff.
- (2) that the defendant was tenant in arrears.
- (3) that the suit notice given by the plaintiff was legal and valid.
- (4) that the plaintiff failed to prove that the defendants are not making use of the suit premises.
- (5) that the plaintiff failed to prove the bona fide requirement of the suit premises.
- (6) that the plaintiff failed to prove that the suit premises is in the possession of defendant No. 1 only.
- (7) that the defendant failed to prove that the suit is barred by misjoinder of party.
- (8) that the defendant was able to prove his bona fide requirement of the suit premises.

2.5 Ultimately, the learned trial judge held that the plaintiff was entitled to decree of rent from 1.3.1992 to 28.2.1995 i.e. for 36 months at the rate of Rs. 20/per month in all amounting to Rs. 720/- and was pleased to dismiss the suit of the plaintiff so far as the suit premises bearing Municipal No. 1/1566 situated on Rajmahel Road, Mahesana is concerned.

3. Being aggrieved and dissatisfied with the aforesaid judgement of the trial Court, the plaintiff filed an appeal being Regular Civil Appeal No. 35 of 1999 before the Extra Assistant Judge, Mehsana. The learned appellate judge after consider the entire evidence on record particularly panchnama produced by the parties came to the conclusion that the defendant was not using the suit premises and the learned trial Judge is not right in holding that the defendants are using the premises and therefore the decree of the learned trial Judge was required to be interfered with.

5. I have heard Mr. U.A. Trivedi, learned counsel for the petitioners and Ms. Kalpana Brambhatt, learned counsel for the respondents. I have also considered the entire evidence on record. After considering the evidence on record, particularly, two panchnamas which are at Exh. 48 and 49, I am of the view that the learned appellate Judge has given cogent and convincing reasons in coming to the conclusion that the premises was not in use by the defendants since long time. In fact, the defendants were not in need of the premises. The

defendants have put lock on the suit premises. In view of the same, it is in the interest of justice to pass decree for possession in favour of the plaintiff.

6. One more aspect of the matter which has weighed with me is that recently the landlord has also filed one affidavit dated 10.7.2003 of one Babulal A. Prajapati. It has been categorically stated that the petitioners herein are not using the suit premises since years and that the said position is clearly established from the panchnamas at Exh. 48 and Exh. 49. Even during the pendency of the suit and even today, the suit premises was not being used by the petitioners and in support of the same, the respondents have produced two photographs showing the premises closed and there is a lot of dust in the premises which shows that the premises was not used for long period.

7. In view of the same, I do not find any reason to interfere with the order of the appellate Judge in this revision under Section 29(2) of the Act. Hence the Revision Application is rejected. No order as to costs.

(K.M. MEHTA, J)
(pkn)